



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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March 31, 2011

CBCA 2185-RELO

In the Matter of JAMES C. CHUPIK

James C. Chupik, Quantico, VA, Claimant.

James Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

**DRUMMOND**, Board Judge.

Claimant, James C. Chupik, an employee of the Department of Justice, Drug Enforcement Administration (DEA), contests the agency's assessment of a debt for the shipment of household goods (HHG) exceeding 18,000 pounds in connection with his permanent change of station (PCS) move in 2009. Because the agency correctly applied the applicable statute and regulations, we deny the claim.

Background

As a part of the PCS move, Mr. Chupik was granted shipment of HHG by government bill of lading (GBL), not to exceed 18,000 pounds net weight. The carrier estimated the likely weight of items to be moved at approximately 29,000 pounds and advised Mr. Chupik and his spouse that they could reduce the weight if they moved some of the items included in the estimate.

The carrier weighed Mr. Chupik's packed and shipped goods twice. The HHG were initially weighed at 21,580 pounds and later re-weighed at 22,820 pounds. The actual weight of the goods used was 21,580 pounds. This exceeded his authorized allowance of 18,000

pounds by 3580 pounds. The agency paid the movers as charged and then assessed claimant an excess weight debt of \$4387 on the 3580 pounds of excess weight.

Mr. Chupik contests the agency's assessment of excess weight charges and the subsequent debt.

### Discussion

Statute limits the Government's payment of an employee's moving expenses to 18,000 pounds net weight, and expressly provides:

Under regulations prescribed under section 5738 of this title and when the head of the agency concerned or his designee authorizes or approves, the agency shall pay from Government funds--

. . . .

the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking his household goods and personal effects not in excess of 18,000 pounds net weight . . . .

5 U.S.C. § 5724(a) (2006).

The Federal Travel Regulation echoes this statutory ceiling on the net weight of HHG for which the Government will pay. 41 CFR 302-7.2 (2009). If an employee's goods and effects weigh more than 18,000 pounds, the employee is responsible for the expenses associated with the additional weight. *Michael V. Torretta*, CBCA 1521-RELO, 09-2 BCA ¶ 34,168.

The agency's determination regarding the weight of Mr. Chupik's HHG is based on the lowest total net weight tickets. Agency determinations concerning the net weight of an employee's HHG shipments will not be disturbed in the absence of clear and substantial evidence of error or fraud. *Susan L. White*, CBCA 1227-RELO, 09-1 BCA ¶ 34,021 (2008) (citing *Richard D. Grulich*, GSBCA 15800-RELO, 02-2 BCA ¶ 31,891). The burden of proving error or fraud is exceeding heavy. *Jaime A. Norris*, GSBCA 13663-RELO, 97-2 BCA ¶ 29,049.

Mr. Chupik asserts that he relied on the estimate made by the supervisor/driver of his moving crew, and he therefore should not be liable for excess weight charges. According

to Mr. Chupik, the supervisor/driver estimated the HHG as around 18,000 pounds. The record here does not establish any clear and substantial evidence of error or fraud as would be needed in order to set aside the agency's determination as to the weight of Mr. Chupik's HHG. Moreover, even when a carrier erroneously estimates the weight of an employee's goods to be shipped, the Government is not bound by these estimates. Erroneous estimates or inaccurate advice by third parties do not alter the Government's obligations under statute or regulation. *David K. Walterscheid*, CBCA 1360-RELO, 09-1 BCA ¶ 34,044 (2008); *David Stockwell*, CBCA 729-RELO, 07-2 BCA ¶ 33,637.

Mr. Chupik claims that he took efforts to reduce the estimated weight before shipment. Mr. Chupik, however, does not offer evidence that demonstrates an error regarding the weight of the goods shipped. The estimate is not critical here given the actual weight.

Mr. Chupik calls our attention to the fact that he could not attend the weigh-in of his HHG. Mr. Chupik, however, has produced no evidence that attending the weigh-in was crucial or that would otherwise excuse his responsibility for excess weight charges.

Mr. Chupik does not dispute the accuracy of the weight. Rather, Mr. Chupik alleges that moving companies often engage in unethical business practices by misrepresenting estimated weights to make more money. Here, the debt arises from the actual shipping weights; the unsupported conjecture is not here relevant. There are no circumstances shown here that would enable us to grant any relief. Accordingly, we affirm the agency's determination.

The claim is denied.

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JEROME M. DRUMMOND  
Board Judge